

103D CONGRESS  
1ST SESSION

# S. 1304

To amend the Federal Water Pollution Control Act to improve the conservation of wetlands and thereby restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JUNE 30), 1993

Mr. BAUCUS (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to improve the conservation of wetlands and thereby restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Wetlands Conservation  
5       and Regulatory Improvements Act".

1 **SEC. 2. AMENDMENT OF FEDERAL WATER POLLUTION CON-**  
2 **TROL ACT.**

3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment or repeal is expressed in terms  
5 of an amendment to, or repeal of, a section or other provi-  
6 sion, the reference shall be considered to be made to a  
7 section or other provision of the Federal Water Pollution  
8 Control Act (33 U.S.C. 1251 et seq.).

9 **SEC. 3. DECLARATION OF POLICIES AND GOALS.**

10 Section 101(a) (33 U.S.C. 1251(a)) is amended—

11 (1) by striking “and” at the end of paragraph  
12 (6);

13 (2) by striking the period at the end of para-  
14 graph (7) and inserting “and”; and

15 (3) by adding at the end the following:

16 “(8) it is the national policy to achieve, through  
17 regulatory and nonregulatory strategies involving all  
18 levels of government—

19 “(A) the restoration of wetlands to in-  
20 crease the quality and quantity of the wetlands  
21 resource base of the United States; and

22 “(B) no overall net loss of the remaining  
23 wetlands resource base of the United States.”.

24 **SEC. 4. DEFINITION AND DELINEATION OF WETLANDS.**

25 (a) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is  
26 amended—

1           (1) in paragraph (7) by inserting “, including  
2 wetlands” immediately before the period; and

3           (2) by adding at the end the following new  
4 paragraph:

5           “(21) The term ‘wetlands’ means those areas that  
6 are inundated or saturated by surface water or  
7 ground water at a frequency and duration sufficient  
8 to support, and that under normal circumstances do  
9 support, a prevalence of vegetation typically adapted  
10 to life in saturated soil conditions. Wetlands gen-  
11 erally include swamps, marshes, bogs, fens, potholes,  
12 playa lakes, vernal pools, and similar areas.”.

13       (b) DELINEATION OF WETLANDS.—

14           (1) REVISIONS TO DELINEATION PROCE-  
15 DURES.—After the date of enactment of this Act, no  
16 revisions to or clarifications of the guidelines for  
17 identifying and delineating wetlands areas under sec-  
18 tion 404(a) of the Federal Water Pollution Control  
19 Act (33 U.S.C. 1344(a)), as amended by this Act,  
20 shall be issued until the National Academy of  
21 Sciences has completed the study of wetlands au-  
22 thorized by Public Law 102–389.

23           (2) CONTINUED USE OF 1987 MANUAL.—Until  
24 the guidelines for identifying and delineating wet-  
25 lands areas are issued pursuant to section 404(a) of

1 the Federal Water Pollution Control Act (33 U.S.C.  
2 1344(a)), as amended by this Act, the Secretary of  
3 the Army, acting through the Chief of Engineers,  
4 and the Administrator of the Environmental Protec-  
5 tion Agency shall use the January 1987, “Corps of  
6 Engineers wetlands delineation manual” and imple-  
7 menting guidelines to identify and delineate such  
8 wetlands areas.

9 (3) DELINEATION GUIDELINES.—Section  
10 404(a) (33 U.S.C. 1344(a)) is amended by inserting  
11 “(1)” after “(a)” and by adding the following new  
12 paragraph:

13 “(2) The Administrator in conjunction with the  
14 Secretary, the Secretary of Agriculture and the Sec-  
15 retary of the Interior shall, after field testing and  
16 notice and opportunity for public review and com-  
17 ment, issue guidelines to identify and delineate wet-  
18 lands areas. The guidelines shall—

19 “(A) be developed in consultation with the  
20 States;

21 “(B) be based on the best available sci-  
22 entific information; and

23 “(C) take into account regional variations  
24 in hydrology, soils, and vegetation.”.

1           (4) DELINEATION TRAINING, CERTIFICATION  
2           AND OUTREACH.—

3           (A) TRAINING OF WETLANDS DELINEA-  
4           TORS.—The Secretary of the Army, acting  
5           through the Chief of Engineers, and the Admin-  
6           istrator of the Environmental Protection Agen-  
7           cy shall, in consultation with the Coordinating  
8           Committee establish under section 323 of the  
9           Federal Water Pollution Control Act, as amend-  
10          ed by this Act, develop materials and conduct  
11          training courses for consultants and State and  
12          local governments to explain the guidelines for  
13          identifying and delineating wetlands areas pur-  
14          suant to section 404(a) of the Federal Water  
15          Pollution Control Act (33 U.S.C. 1344(a)), as  
16          amended by this Act.

17          (B) FUNDING FOR TRAINING AND CERTIFI-  
18          CATION PROGRAM.—Of amounts appropriated  
19          for each fiscal year beginning after the date of  
20          the enactment of this Act for administration of  
21          section 404 of the Federal Water Pollution  
22          Control Act (33 U.S.C. 1344) by the Corps of  
23          Engineers, the Secretary of the Army, with the  
24          Administrator, shall use such amounts as are  
25          practicable to carry out the Corps of Engineers

1 Program for interagency wetlands delineation  
2 training and the program for training and cer-  
3 tification of Federal employees and other indi-  
4 viduals as wetlands delineators authorized by  
5 section 307(e) of the Water Resources Develop-  
6 ment Act of 1990 (Public Law 101–640).

7 (5) ASSISTING SMALL LANDOWNERS WITH WET-  
8 LANDS DELINEATION.—

9 (A) IN GENERAL.—Of amounts appro-  
10 priated for each fiscal year beginning after the  
11 date of enactment of this Act for administration  
12 of section 404 of the Federal Water Pollution  
13 Control Act (33 U.S.C. 1344), the Secretary of  
14 the Army, acting through the Chief of Engi-  
15 neers, and the Administrator of the Environ-  
16 mental Protection Agency shall use such  
17 amounts as are necessary, but not to exceed a  
18 combined total of \$5,000,000, to assist private  
19 landowners who lack the financial capacity to  
20 identify or delineate wetlands in order to apply  
21 for permits under that section or to avoid im-  
22 pacts to wetlands.

23 (B) FORM OF ASSISTANCE.—The assist-  
24 ance under subparagraph (A) shall be provided  
25 in cooperation with the Director of the United

1 States Fish and Wildlife Service and the Chief  
2 of the Soil Conservation Service and shall in-  
3 clude—

4 (i) the delineation of wetlands bound-  
5 aries within ninety days of a request for  
6 such delineation to the maximum extent  
7 practicable; and

8 (ii) technical assistance to owners of  
9 wetlands in the preparation of wetlands  
10 management plans for their lands to pro-  
11 tect and restore wetlands and meet other  
12 goals of the Federal Water Pollution Con-  
13 trol Act, including protection and propaga-  
14 tion of fish, shellfish, and wildlife, control  
15 of nonpoint and point sources of pollution,  
16 prevention and reduction of erosion, and  
17 protection of estuaries and lakes.

18 (C) REGULATIONS.—Within one hundred  
19 and eighty days after the date of enactment of  
20 this Act, the Secretary and the Administrator  
21 shall issue regulations defining the scope of  
22 technical assistance and which landowners are  
23 eligible for assistance under this paragraph.

24 (6) EDUCATION AND INFORMATION.—The Sec-  
25 retary of the Army, acting through the Chief of En-

1       gineers, and the Administrator of the Environmental  
2       Protection Agency shall, in cooperation with the Co-  
3       ordinating Committee established under section 323  
4       of the Federal Water Pollution Control Act (as  
5       amended by this Act), prepare, update on a biannual  
6       basis, and make available to the public for purchase  
7       at cost—

8               (A) an indexed publication containing all  
9       Federal regulations, general permits, and regu-  
10      latory guidance letters relevant to the permit-  
11      ting of activities pursuant to section 404 of the  
12      Federal Water Pollution Control Act (33 U.S.C.  
13      1344); and

14             (B) information to enable the general pub-  
15      lic to understand the delineation of wetlands,  
16      section 404 permitting requirements, wetlands  
17      restoration, and other matters considered rel-  
18      evant.

19   **SEC. 5. REGULATION OF ACTIVITIES.**

20       (a) **DEFINITION OF FILL MATERIAL.**—

21             (1) Section 404(d) (33 U.S.C. 1344(d)) is  
22      amended—

23               (A) by inserting “(1)” after “(d)”; and

24               (B) by adding at the end the following:

1           “(2) The term ‘fill material’ as used in this  
2           section means any material that has the effect  
3           of replacing portions of navigable waters or  
4           changing the bottom elevation or configuration  
5           of a water body.”.

6           (2) Section 502(6) (33 U.S.C. 1362(6)) is  
7           amended by inserting “fill material, dirt,” after  
8           “dredged spoil,”.

9           (b) DEFINITION OF DISCHARGE OF DREDGED OR  
10          FILL MATERIAL.—Section 404(d) (33 U.S.C. 1344(d)),  
11          as amended by this Act, is amended by adding at the end  
12          the following:

13               “(3) The term ‘discharge of dredged or fill ma-  
14               terial’ means any addition of dredged or fill material  
15               into navigable waters and includes, without limita-  
16               tion, any addition or redeposit of dredged or fill ma-  
17               terials, including excavated materials, into the navi-  
18               gable waters which is incidental to any activity, in-  
19               cluding draining, mechanized landclearing, ditching,  
20               channelization, or other excavation that has or would  
21               have the effect of destroying or degrading any area  
22               of navigable waters.”.

1 **SEC. 6. PERMIT PROCESSING IMPROVEMENTS.**

2 (a) PERMIT DECISION DEADLINES.—Section 404(a)  
3 (33 U.S.C. 1344(a)), as amended by this Act, is amended  
4 by adding the following new paragraphs:

5 “(3) Except as provided in paragraph (4), a de-  
6 cision with respect to an application for a permit  
7 under paragraph (1) shall be made not later than  
8 the ninetieth day after the date the notice of such  
9 application is published under paragraph (1).

10 “(4) The Secretary’s decision with respect to an  
11 application for a permit under paragraph (1) may be  
12 made after the ninetieth day referred to in para-  
13 graph (3), only if—

14 “(A) with respect to issuance of the per-  
15 mit, the Secretary is required under the Na-  
16 tional Environmental Policy Act of 1969, as  
17 amended, to issue an environmental impact  
18 statement, in which case the decision shall be  
19 made within thirty days of date on which the  
20 requirements of that Act are met;

21 “(B) the permit application involves an ac-  
22 tivity that may affect any species that is listed  
23 or any critical habitat that is designated under  
24 the Endangered Species Act of 1973, as amend-  
25 ed, in which case the decision shall be made

1 within thirty days of the date on which the re-  
2 quirements of that Act are met;

3 “(C) the Administrator, the Secretaries of  
4 the Departments of Agriculture, the Interior,  
5 Commerce, or Transportation, the head of an-  
6 other appropriate Federal agency, or the Gov-  
7 ernor of the State in which the activity occurs  
8 requests that the decision be made after such  
9 day, in which case the decision shall be made  
10 not later than the one hundred and fiftieth day  
11 after the date the notice of application is pub-  
12 lished under paragraph (1);

13 “(D) the Secretary and the permit appli-  
14 cant determine that additional time is needed to  
15 evaluate such application; or

16 “(E) the decision is precluded as a matter  
17 of law or procedures required by law.”.

18 (b) DEADLINES ON PROHIBITION OR RESTRICTION  
19 OF ACTIVITIES BY ADMINISTRATOR.—Section 404(c) (33  
20 U.S.C. 1344(c)) is amended by adding at the end the fol-  
21 lowing new sentence: “The Administrator shall make any  
22 determination under this subsection to prohibit or restrict  
23 any discharge into navigable waters resulting from an ac-  
24 tivity for which a permit may be issued under subsection  
25 (a) not later than the one hundred and eightieth day after

1 the date of decision with respect to an application for such  
2 a permit under subsection (a).”.

3 (c) ADMINISTRATIVE APPEAL OF PERMIT DECI-  
4 SIONS.—

5 (1) IN GENERAL.—Section 404(a) (33 U.S.C.  
6 1344(a)), as amended by this Act, is amended by  
7 adding at the end the following new paragraph:

8 “(5) The Secretary shall, after notice and an  
9 opportunity for public comment, issue rules estab-  
10 lishing procedures under which—

11 “(A) an applicant for a permit under para-  
12 graph (1) or any person who participated in the  
13 public comment process regarding such permit  
14 application may appeal a decision under this  
15 subsection with respect to such a permit; and

16 “(B) an appeal shall be heard and decided  
17 by an official other than the person who made  
18 the decision with respect to such a permit.”.

19 (2) DEADLINE FOR ISSUANCE OF RULES.—The  
20 Secretary shall issue rules under section 404(a)(5)  
21 (33 U.S.C. 1344(a)(5)), as amended by this Act, by  
22 not later than one hundred eighty days after the  
23 date of the enactment of this Act.

1 **SEC 7. GENERAL PERMIT IMPROVEMENTS.**

2 Section 404(e) (33 U.S.C. 1344(e)) is amended to  
3 read as follows:

4 “(e)(1) IN GENERAL.—In carrying out the functions  
5 of the Secretary under this section relating to the dis-  
6 charge of dredged or fill material, the Secretary may, after  
7 notice and opportunity for a public hearing, issue general  
8 permits.

9 “(2) CATEGORIES OF ACTIVITIES.—General permits  
10 may be issued on a State, regional, or nationwide basis  
11 for any category of activities involving discharges of  
12 dredged or fill material if the Secretary determines that  
13 the activities in such category are similar in nature, will  
14 cause only minimal adverse environmental effects when  
15 performed separately, and will have only a minimal cumu-  
16 lative adverse effect on the environment.

17 “(3) STATE AND LOCAL PROGRAMS.—

18 “(A) IN GENERAL.—A general permit may be  
19 issued for an existing State, tribal, regional or local  
20 regulatory program to avoid unnecessary duplication  
21 of requirements by Federal, State, tribal, regional,  
22 and local programs if the general permit—

23 “(i) requires that the State, tribal, re-  
24 gional, or local regulatory program has jurisdic-  
25 tion over the activities and waters within the  
26 scope of the general permit;

1           “(ii) provides adequate safeguards to en-  
2           sure that the State, tribal, regional, or local  
3           regulatory program will have no more than  
4           minimal cumulative impacts on the environment  
5           and will provide at least the same degree of  
6           protection for the navigable waters as that pro-  
7           vided by this section;

8           “(iii) provides at least the same oppor-  
9           tunity for public review, comment, and hearings  
10          as that provided by this section; and

11          “(iv) includes provisions to provide an op-  
12          portunity for the Secretary, the Administrator,  
13          the Secretary of the Interior (acting through  
14          the Director of the United States Fish and  
15          Wildlife Service), and the Secretary of Com-  
16          merce (acting through the Administrator of the  
17          National Oceanic and Atmospheric Administra-  
18          tion) to review permit decisions submitted to  
19          the State, tribal, regional, or local regulatory  
20          agency to ensure that the requirements of this  
21          subsection are met.

22          “(B) After December 31, 1996, a general per-  
23          mit shall not be issued or remain in effect for a local  
24          or regional regulatory program unless the program  
25          is part of a wetlands and watershed management

1 plan approved under section 322, and the respon-  
2 sible unit of government has the legal authority and  
3 scientific monitoring capability to issue, monitor,  
4 and enforce permits in compliance with the require-  
5 ments of the plan and the terms and conditions of  
6 the general permit.

7 “(4) SWAMPBUSTER.—A general permit may be is-  
8 sued for discharges of dredged or fill material associated  
9 with activities found by the Secretary of Agriculture, in  
10 consultation with the Secretary of the Interior acting  
11 through the Director of the United States Fish and Wild-  
12 life Service, to be exempted from the ineligibility provi-  
13 sions of section 1222 of the Food Security Act of 1985  
14 (16 U.S.C. 3822) pursuant to section 1222 (f) and (h)  
15 of that Act if the general permit—

16 “(A) provides adequate safeguards to ensure  
17 that the activities exempted will have no more than  
18 minimal individual and cumulative impacts on the  
19 environment; and

20 “(B) includes provisions to provide an oppor-  
21 tunity for the Secretary and the Administrator to re-  
22 view determinations by the Secretary of Agriculture  
23 to ensure that the terms and conditions of the gen-  
24 eral permit and the requirements of this subsection  
25 are met.

1       “(5) REQUIREMENTS APPLICABLE TO GENERAL PER-  
2     MITS.—

3               “(A) No general permit issued under this sub-  
4     section shall be for a period of more than five years  
5     after the date of its issuance and such general per-  
6     mit may be revoked or modified by the Secretary if,  
7     after notice and opportunity to request a public  
8     hearing, the Secretary determines that the activities  
9     authorized by such general permit have an adverse  
10    impact on the environment or such activities are  
11    more appropriately authorized by individual permits  
12    or a State, Tribal or local government has failed to  
13    adequately monitor and control the individual and  
14    cumulative adverse effects of activities authorized by  
15    State, Tribal, regional or local program general per-  
16    mits issued under paragraph (3).

17              “(B) Any general permit issued under this sub-  
18    section shall—

19                   “(i) be based on the guidelines developed  
20                   pursuant to subsection (b)(1); and

21                   “(ii) set forth requirements and standards  
22                   which shall apply to any activity authorized by  
23                   such permit, including specific enforceable re-  
24                   quirements and standards for mitigation of ad-

1           verse impacts to wetlands and other navigable  
2           waters.”.

3   **SEC. 8. COORDINATION AND CLARIFICATION OF PROGRAM**  
4                   **CONCERNING AGRICULTURAL ACTIVITIES.**

5           (a) COORDINATION WITH AGRICULTURAL PRO-  
6 GRAMS.—Section 404(q) (33 U.S.C. 1344(q)) is amended  
7 by inserting “(1)” after “(q)” and by adding the following  
8 new paragraph:

9           “(2) Not later than one hundred and eighty  
10          days after the date of enactment of this subsection,  
11          the Secretary, the Administrator, the Secretary of  
12          the Interior, and the Secretary of Agriculture shall  
13          enter into agreements to develop consistent criteria  
14          and procedures for making technical determinations  
15          under subtitle C of title XII of the Food Security  
16          Act of 1985 (16 U.S.C. 3821 et seq.) and this sec-  
17          tion concerning wetlands located on agricultural  
18          lands, including but not limited to the delineation of  
19          wetlands and prior converted croplands and to pro-  
20          vide information and education concerning these cri-  
21          teria and procedures.”.

22          (b) EXEMPTION FOR PRIOR CONVERTED CROP-  
23 LAND.—Section 404(f) (33 U.S.C. 1344(f)) is amended by  
24 adding the following new paragraph:

1           “(3)(A) Areas determined in accordance with  
 2           subparagraph (B) to be prior converted cropland  
 3           shall not be considered to be navigable waters.

4           “(B) The Secretary, the Administrator, the  
 5           Secretary of Agriculture, and the Secretary of the  
 6           Interior shall promulgate regulations, after notice  
 7           and opportunity for public review and comment, for  
 8           identifying areas that meet the description under  
 9           subparagraph (A) for administering the programs  
 10          established under this section and subtitle C of title  
 11          XII of the Food Security Act of 1985 (16 U.S.C.  
 12          3821 et seq.).”.

13          (c) OTHER EXEMPT WATERS AND AREAS.—Section  
 14          404(f) (33 U.S.C. 1344(f)), as amended by this Act, is  
 15          amended by adding the following new paragraph:

16               “(4)(A) For purposes of this section, the follow-  
 17               ing shall not be considered to be navigable waters—

18                       “(i) nontidal drainage and irrigation  
 19                       ditches excavated in uplands;

20                       “(ii) artificially irrigated areas which  
 21                       would revert to uplands if the irrigation ceased;

22                       “(iii) artificial lakes or ponds created by  
 23                       excavating or diking uplands to collect and re-  
 24                       tain water, and which are used exclusively for  
 25                       stock watering, irrigation, or rice growing;

1           “(iv) artificial reflecting or swimming pools  
2           or other small ornamental bodies of water cre-  
3           ated by excavating or diking uplands to retain  
4           water for primarily aesthetic reasons;

5           “(v) water-filled depressions created in up-  
6           lands incidental to construction activity and pits  
7           excavated in uplands for the purpose of obtain-  
8           ing fill, sand, or gravel, unless and until the  
9           construction or excavation operation is aban-  
10          doned and the resulting body of water meets  
11          the definition of waters of the United States;  
12          and

13          “(vi) artificial stormwater detention areas  
14          and artificial sewage treatment areas that are  
15          not modifications of navigable waters.”.

16          (d) EXEMPTED ACTIVITIES.—Section 404(f)(1) (33  
17          U.S.C. 1344(f)(1)) is amended to read as follows:

18          “(f)(1) Except as provided in paragraph (2), the dis-  
19          charge of dredged or fill material into navigable waters—

20               “(A) from normal farming, silviculture, and  
21               ranching activities, such as haying, grazing, plowing,  
22               seeding, cultivating, minor drainage, harvesting for  
23               the production of food, fiber, and forest products, or  
24               upland soil and water conservation practices;

1           “(B) for the purpose of maintenance, including  
2           emergency reconstruction of recently damaged parts,  
3           of currently serviceable structures such as dikes,  
4           dams, levees, groins, riprap, breakwaters, causeways,  
5           bridge abutments or approaches, and transportation  
6           structures;

7           “(C) for the purpose of construction or mainte-  
8           nance of farm or stock ponds or irrigation ditches,  
9           or the maintenance of drainage ditches;

10          “(D) for the purpose of construction of tem-  
11          porary sedimentation basins on a construction site  
12          which does not involve a discharge of fill into navi-  
13          gable waters;

14          “(E) for the purpose of construction or mainte-  
15          nance of farm roads or forest roads, or temporary  
16          roads for moving mining equipment, where such  
17          roads are constructed and maintained, in accordance  
18          with best management practices, to assure that flow  
19          and circulation patterns and chemical and biological  
20          characteristics of the navigable waters are not im-  
21          paired, that the reach of the navigable waters is not  
22          reduced, and that any adverse effect on the aquatic  
23          environment will otherwise be minimized; or

24          “(F) resulting from any activity with respect to  
25          which a State has an approved program under sec-

1       tion 208(b)(4) which meets the requirements of sub-  
 2       paragraphs (B) and (C) of such section,  
 3 is not prohibited by or otherwise subject to regulation  
 4 under this section or section 301(a) or 402 of this Act  
 5 (except for effluent standards or prohibitions under sec-  
 6 tion 307).”.

7       (e) COOPERATION WITH SECRETARY OF AGRI-  
 8 CULTURE.—Section 404(f) (33 U.S.C. 1344(f)), as  
 9 amended by this Act, is amended by adding the following  
 10 new paragraph:

11               “(5) In carrying out this subsection, the Sec-  
 12       retary and the Administrator shall coordinate their  
 13       efforts with the Secretary of Agriculture.”.

14 **SEC. 9. MITIGATION BANKS.**

15       Section 404 (33 U.S.C. 1344) is amended by adding  
 16 at the end thereof the following new section:

17       “(u) MITIGATION BANKS.—

18               “(1) ESTABLISHMENT.—

19                       “(A) IN GENERAL.—Not later than one  
 20       year after the date of the enactment of the  
 21       Wetlands Conservation and Regulatory Im-  
 22       provements Act of 1993, the Secretary and the  
 23       Administrator shall jointly issue rules, after no-  
 24       tice and opportunity for public review and com-

1           ment, for establishment, use, maintenance and  
2           oversight of mitigation banks.

3           “(B) PROVISIONS AND REQUIREMENTS.—  
4           Rules for establishment, use, maintenance and  
5           oversight of mitigation banks shall ensure that  
6           mitigation banks—

7                   “(i) comply with the guidelines under  
8                   subsection (b)(1);

9                   “(ii) to the extent practicable and en-  
10                  vironmentally desirable, provide in-kind re-  
11                  placement of lost wetlands functions and  
12                  be located on or in proximity to the same  
13                  watershed as impacted wetlands;

14                  “(iii) provide for the long-term secu-  
15                  rity of ownership interests of wetlands and  
16                  uplands on which projects are conducted to  
17                  protect the wetlands values associated with  
18                  the mitigation bank;

19                  “(iv) employ consistent and scientif-  
20                  ically-sound methods to determine debits  
21                  by evaluating wetlands functions and  
22                  project impacts at the sites of proposed  
23                  permits for discharges of dredged or fill  
24                  material pursuant to this section, and  
25                  methods to be used to determine credits

1 based upon wetlands functions, values, and  
2 acreages at the sites of mitigation banks;

3 “(v) base fee charges for participation  
4 in the mitigation bank on the full costs of  
5 replacing lost wetlands functions and acre-  
6 age, including the costs of land acquisition,  
7 wetlands establishment, management  
8 measures, long-term maintenance, monitor-  
9 ing, and protection, potential remediation  
10 of project failure, and other relevant fac-  
11 tors;

12 “(vi) shall specify responsibilities for  
13 long-term monitoring, maintenance, and  
14 protection; and

15 “(vii) shall provide opportunity for  
16 public review of proposals for mitigation  
17 banks through one or more opportunities  
18 for public notice and comment.

19 “(2) DEFINITION.—As used in this subsection,  
20 the term ‘mitigation bank’ means wetlands restora-  
21 tion projects undertaken by one or more parties, in-  
22 cluding private and public entities, expressly for the  
23 purpose of providing, in advance, mitigation com-  
24 pensation credits to fully offset reasonably foresee-  
25 able wetlands losses from future discharges of

1 dredged or fill material into the navigable waters,  
2 where compensatory mitigation at the project site is  
3 not practicable or is not environmentally desirable.”.

4 **SEC. 10. GRANT AUTHORITY FOR RESEARCH, INVESTIGA-**  
5 **TION, AND TRAINING.**

6 Section 104 (33 U.S.C. 1254) is amended by adding  
7 at the end the following new subsection:

8 “(v) The Secretary of the Army, acting through the  
9 Chief of Engineers, is authorized to make grants to and  
10 enter into cooperative agreements with State agencies,  
11 interstate agencies, other public or non-profit agencies, in-  
12 stitutions, organizations and individuals for purposes stat-  
13 ed in paragraph (1) of subsection (a) of this section.”.

14 **SEC. 11. REPORTS AND ANALYSIS.**

15 (a) EFFECTS OF PROGRAM ON WETLANDS.—Section  
16 404(a) (33 U.S.C. 1344(a)), as amended by this Act, is  
17 amended by adding at the end the following new para-  
18 graph:

19 “(6)(A) The Secretary, the Administrator, and  
20 the States which have a permit program approved  
21 under subsection (h)(2) shall collect and make avail-  
22 able to the Congress and the public every two years  
23 information regarding the effects on navigable wa-  
24 ters of activities conducted under permits (including

1 general permits) issued pursuant to this section, in-  
2 cluding—

3 “(i) the number of permit applications that  
4 were granted, withdrawn or denied;

5 “(ii) estimates of the total acreage of navi-  
6 gable waters affected adversely by issuance of  
7 individual permits;

8 “(iii) estimates of the acreage of navigable  
9 waters affected by each general permit, in order  
10 to determine whether the individual and cumu-  
11 lative adverse environmental effects of activities  
12 authorized by each general permit are minimal;  
13 and

14 “(iv) estimates of the acreage of navigable  
15 waters preserved or restored through mitigation  
16 of permitted activities and the rate of compli-  
17 ance with such mitigation requirements.

18 “(B) MONITORING.—For purposes of preparing  
19 reports under this paragraph, the Secretary, the Ad-  
20 ministrator, and the Secretary of the Interior shall  
21 jointly monitor the achievement of the policy stated  
22 in section 101(a)(8) under permits issued under this  
23 section.”.

24 (b) NEEDS ANALYSIS.—

1           (1) IN GENERAL.—Not later than ninety days  
2       after the date of the enactment of this Act, the  
3       Comptroller General of the United States shall sub-  
4       mit to the Congress an analysis of the needs of the  
5       Department of the Army, the Environmental Protec-  
6       tion Agency, the United States Fish and Wildlife  
7       Service, and the National Marine Fisheries Service  
8       for additional personnel, administrative resources,  
9       and funding to improve implementation of section  
10      404 of the Federal Water Pollution Control Act (33  
11      U.S.C. 1344) and to carry out the provisions of this  
12      Act.

13          (2) CONTENTS.—The analysis submitted under  
14      this subsection shall—

15            (A) give particular emphasis to the needs  
16            of the agencies identified in paragraph (1) with  
17            respect to improving and expediting wetlands  
18            delineation and section 404 permitting, includ-  
19            ing advance planning and early consultation;

20            (B) include specific recommendations re-  
21            garding additional appropriations and staffing  
22            necessary for that improvement and expedition;  
23            and

24            (C) include specific recommendations con-  
25            cerning allocation of additional appropriations

1           and staffing to the regional, district and field  
 2           offices of the agencies identified in paragraph  
 3           (1) according to the workload of those offices.

4   **SEC. 12. WETLANDS CONSERVATION, MANAGEMENT AND**  
 5           **RESTORATION.**

6           (a) FUNDING FOR STATE WETLANDS CONSERVATION  
 7   PLANS.—Section 104(b)(3) (33 U.S.C. 1254(b)(3)) is  
 8   amended by inserting immediately before the semicolon “  
 9   and for the development and implementation of State wet-  
 10   lands conservation plans under section 321”.

11          (b) WETLANDS CONSERVATION, MANAGEMENT AND  
 12   RESTORATION.—Title III (33 U.S.C. 1311 et seq.) is  
 13   amended by the adding at the end the following new sec-  
 14   tions:

15   **“SEC. 321. STATE WETLANDS CONSERVATION PLANS.**

16          “(a) DEVELOPMENT AND IMPLEMENTATION ASSIST-  
 17   ANCE.—Subject to the requirements established by the  
 18   Administrator and this section, the Administrator is au-  
 19   thorized to make grants to States to assist in the develop-  
 20   ment and implementation of State wetlands conservation  
 21   plans.

22          “(b) CONTENTS OF PLANS.—To qualify for assist-  
 23   ance under subsection (a), a State wetlands conservation  
 24   plan shall generally include—

1           “(1) management strategies and policies for  
2 achieving within the State the goal under section  
3 101(a)(8);

4           “(2) an inventory of wetlands resources in the  
5 State;

6           “(3) a description of the major causes of wet-  
7 lands loss and degradation in the State, including an  
8 estimate of historical wetlands losses;

9           “(4) a description of State and local govern-  
10 ment programs applying to wetlands resources in the  
11 State;

12           “(5) identification of sites in the State with  
13 wetlands restoration potential;

14           “(6) identification of riparian areas in the State  
15 with restoration potential;

16           “(7) a schedule for implementing the elements  
17 of the plan;

18           “(8) a mechanism for monitoring achievement  
19 of the stated goals of the plan;

20           “(9) measures to assist in the development of  
21 wetlands and watershed management plans under  
22 section 322; and

23           “(10) involvement of local public and private  
24 agencies and organizations which have expertise in

1 wetlands conservation or land use planning or devel-  
2 opment.

3 **“SEC. 322. WETLANDS AND WATERSHED MANAGEMENT**  
4 **PLANS.**

5 “(a) DESIGNATION AND APPROVAL OF MANAGEMENT  
6 UNITS AND ENTITIES.—

7 “(1) IN GENERAL.—The Governor of a State  
8 may at any time designate wetlands and associated  
9 land areas within the State as a wetlands and water-  
10 shed management unit.

11 “(2) UNIT BOUNDARIES.—The boundaries of  
12 each wetlands and watershed management unit shall  
13 be identified on a map and shall be based on the  
14 best available scientific information and, to the ex-  
15 tent practicable, consistent with the hydrological  
16 units identified by the United States Geological Sur-  
17 vey of the Department of the Interior as the most  
18 appropriate units for planning purposes.

19 “(3) MANAGEMENT ENTITY.—The Governor of  
20 a State shall determine the entity responsible for de-  
21 veloping and implementing a plan for each wetlands  
22 and watershed management unit designated under  
23 this section. The management entity may be an  
24 agency of State government, a local government  
25 agency, a substate regional planning organization, a

1 conservation district or other natural resource man-  
2 agement district, or any other public or nonprofit  
3 entity which has adequate powers to carry out the  
4 responsibilities authorized by this section.

5 “(4) APPROVAL.—Each designation of a wet-  
6 lands and watershed management unit and a cor-  
7 responding management entity under this subsection  
8 shall be submitted to the Administrator and the Sec-  
9 retary of the Army, acting through the Chief of En-  
10 gineers (hereinafter in this section referred to as  
11 ‘Secretary’), for approval. The Administrator and  
12 the Secretary shall approve the designation of a  
13 management unit and entity not later than one hun-  
14 dred and eighty days after the date of submittal, if  
15 the designation meets the requirements of this sec-  
16 tion. If the Administrator and the Secretary dis-  
17 approve the designation, they shall notify the State  
18 in writing of the reasons for disapproval. The State  
19 may resubmit the designation amended to meet the  
20 objections of the Administrator and the Secretary.

21 “(b) DEVELOPMENT AND APPROVAL OF A WET-  
22 LANDS AND WATERSHED MANAGEMENT PLAN.—

23 “(1) PLAN DEVELOPMENT.—An approved man-  
24 agement entity shall be eligible to receive funding  
25 pursuant to section 106(h), 205(j), 319(e), or

1       604(b) (or any combination thereof) for the follow-  
2       ing activities in the development of a wetlands and  
3       watershed management plan:

4               “(A) Inventory and mapping of—

5                       “(i) all navigable waters within the  
6                       proposed wetlands and watershed manage-  
7                       ment unit; and

8                       “(ii) potential wetlands restoration  
9                       sites.

10               “(B) Assessment of the functions and rel-  
11               ative value of wetlands within the wetlands and  
12               watershed management unit.

13               “(C) Categorization of activities according  
14               to the degree to which they have an adverse ef-  
15               fect on navigable waters within the wetlands  
16               and watershed management unit.

17               “(D) Identification and adoption of pro-  
18               grams, policies and measures to achieve within  
19               the wetlands and watershed management unit  
20               the goal under section 101(a)(8).

21               “(E) Identification of potential mitigation  
22               banks.

23               “(F) Identification and adoption of meas-  
24               ures to integrate wetlands planning and man-  
25               agement with broader water resource and land

1 use planning and management, including flood-  
2 plain management, water supply, stormwater  
3 management, and control of point and nonpoint  
4 source pollution.

5 “(G) Identification and adoption of meas-  
6 ures to increase consistency in Federal, State,  
7 and local wetlands definitions, delineation meth-  
8 odologies, and permitting approaches.

9 “(H) Identification and establishment of  
10 management strategies for restoring wetlands  
11 on a watershed basis.

12 “(2) PUBLIC PARTICIPATION.—Each State shall  
13 establish procedures, including the establishment of  
14 scientific and citizens’ advisory committees, to en-  
15 courage the public to participate in developing wet-  
16 lands and watershed management plans under this  
17 section.

18 “(3) APPROVAL OF PLANS.—

19 “(A) SUBMISSION OF PLAN.—The Gov-  
20 ernor of a State may submit to the Adminis-  
21 trator for approval a wetlands and watershed  
22 management plan developed pursuant to this  
23 section.

24 “(B) DECISION ON PLAN.—The Adminis-  
25 trator and the Secretary shall, in consultation

1 with the Secretaries of the Interior, Agriculture,  
2 and Commerce, and after notice and oppor-  
3 tunity for public comment, approve or dis-  
4 approve a wetlands and watershed management  
5 plan within one hundred and eighty days of the  
6 date the plan is submitted by a Governor pur-  
7 suant to this paragraph.

8 “(C) PLAN REQUIREMENTS.—The Admin-  
9 istrator and the Secretary shall approve a wet-  
10 lands and watershed management plan submit-  
11 ted pursuant to this paragraph if they deter-  
12 mine that the plan satisfies each of the follow-  
13 ing conditions—

14 “(i) the plan has been developed for a  
15 wetlands and watershed management unit  
16 designated and approved pursuant to sub-  
17 section (a);

18 “(ii) the management entity with re-  
19 sponsibility to carry out the plan has been  
20 designated and approved pursuant to sub-  
21 section (a) and has the legal authority and  
22 financial resources to carry out the plan;

23 “(iii) the plan contains an inventory  
24 and mapping of—

1                   “(I) all navigable waters within  
2                   the proposed wetlands and watershed  
3                   management unit; and

4                   “(II) potential wetlands restora-  
5                   tion sites with a description of their  
6                   intended functions upon completion  
7                   and the time required for completion;

8                   “(iv) the management entity has  
9                   adopted programs, policies and measures  
10                  that will ensure achievement within the  
11                  watershed of the goal under section  
12                  101(a)(8); and

13                  “(v) the plan provides that the man-  
14                  agement entity will report to the Adminis-  
15                  trator, the Secretary and the public every  
16                  two years on implementation of the plan  
17                  and on the losses and gains in functions  
18                  and acres of wetlands within the wetlands  
19                  and watershed management unit.

20                  “(c) PLAN IMPLEMENTATION AND REVISION.—

21                   “(1) PLANNING AND IMPLEMENTATION SCHED-  
22                  ULE.—Each wetlands and watershed management  
23                  plan submitted and approved under subsection (b)  
24                  shall include a planning and implementation sched-  
25                  ule for a period of at least ten years.

1           “(2) DURATION OF APPROVAL.—The approval  
2           of a plan by the Administrator and the Secretary  
3           shall apply for a period not to exceed ten years.

4           “(3) PLAN REVISIONS.—A revised and updated  
5           plan may be submitted for approval prior to the ex-  
6           piration of the period specified in paragraph (2) pur-  
7           suant to the same conditions and requirements that  
8           apply to any initial plan for a wetlands and water-  
9           shed management unit that is approved pursuant to  
10          subsection (b).

11          “(d) INCENTIVES FOR WETLANDS AND WATERSHED  
12          MANAGEMENT PLANNING.—

13               “(1) FUNDING OF PROJECTS AND ACTIVI-  
14               TIES.—Projects and activities identified in an ap-  
15               proved plan as necessary for achievement within the  
16               wetlands and watershed management unit of the  
17               goal under section 101(a)(8), and not otherwise re-  
18               quired by this or other Federal law, shall—

19                       “(A) be eligible for funding under section  
20                       603(c)(1)(F);

21                       “(B) be included in any needs assessment  
22                       conducted pursuant to section 516; and

23                       “(C) be eligible for funding under section  
24                       604(a)(2)(C).

1           “(2) EXPEDITED PERMIT REVIEW.—Notwith-  
2           standing section 404(a), a decision under that sec-  
3           tion with respect to a completed application for a  
4           permit for discharge of dredged or fill material into  
5           navigable waters within a designated wetlands and  
6           watershed unit and subject to an approved wetlands  
7           and watershed management plan shall be made not  
8           later than the sixtieth day after the date the notice  
9           of such application is published under section  
10          404(a)(1), unless—

11                 “(A) with respect to issuance of the per-  
12                 mit, the Secretary is required under the Na-  
13                 tional Environmental Policy Act of 1969 to  
14                 issue an environmental impact statement;

15                 “(B) the permit application involves an ac-  
16                 tivity that may affect any species that is listed  
17                 or any critical habitat that is designated under  
18                 the Endangered Species Act of 1973;

19                 “(C) the Administrator, the Secretaries of  
20                 the Departments of Agriculture, the Interior,  
21                 Commerce, or Transportation, the head of an-  
22                 other appropriate Federal agency, or the Gov-  
23                 ernor of the State in which the activity occurs  
24                 requests that the decision be made after such  
25                 day, in which case the decision shall be made

1 not later than the ninetieth day after the date  
2 the notice of application is published under sec-  
3 tion 404(a)(1);

4 “(D) the Secretary and the permit appli-  
5 cant determine that additional time is needed to  
6 evaluate such application; or

7 “(E) the decision is precluded as a matter  
8 of law or procedures required by law.

9 “(3) MITIGATION BANKS.—

10 “(A) At the request of an approved man-  
11 agement entity, the Secretary and the Adminis-  
12 trator shall provide assistance in establishment  
13 of mitigation banks under this section and sec-  
14 tion 404(u) by the approved management entity  
15 to achieve the goal under section 101(a)(8)  
16 within an approved wetlands and watershed  
17 management unit and in accordance with an  
18 approved wetlands and watershed management  
19 plan.

20 “(B) Establishment and oversight of miti-  
21 gation banks within an approved wetlands and  
22 watershed management unit and in accordance  
23 with an approved wetlands and watershed man-

1           agement plan shall be eligible for funding under  
2           paragraph (1).

3           “(4) PROGRAMMATIC GENERAL PERMITS.—

4           After December 31, 1996, a general permit may be  
5           issued or remain in effect under section 404(e)(3)  
6           for a local or regional regulatory program if the pro-  
7           gram is part of a wetlands and watershed manage-  
8           ment plan approved under section 322.

9           “(f) RESEARCH PROGRAM.—The Administrator, in  
10          cooperation with the Secretary, the Secretary of the Inte-  
11          rior and other appropriate Federal, State, and local gov-  
12          ernment entities, shall initiate a research program of wet-  
13          lands and watershed management. The research program  
14          shall include—

15               “(1) study of the functions, values and manage-  
16               ment needs of altered, artificial, and managed wet-  
17               lands systems;

18               “(2) study and development of techniques and  
19               methods for determining and analyzing the functions  
20               and values of different types of wetlands;

21               “(3) study and development of techniques for  
22               managing and restoring wetlands within a watershed  
23               context;

24               “(4) study and development of techniques for  
25               better coordinating and integrating wetlands protec-

1       tion, floodplain management, stormwater manage-  
 2       ment, point and nonpoint source pollution controls,  
 3       and water supply planning on a watershed basis;

4               “(5) development of criteria for identifying wet-  
 5       lands restoration sites on a watershed basis; and

6               “(6) recommendation of procedures and ecologi-  
 7       cal criteria for wetlands restoration.

8       **“SEC. 323. INTERGOVERNMENTAL WETLANDS COORDINAT-**  
 9               **ING COMMITTEE.**

10       “(a) ESTABLISHMENT.—Not later than ninety days  
 11 after the date of the enactment of the Wetlands Conserva-  
 12 tion and Regulatory Improvements Act of 1993, the Ad-  
 13 ministrator shall establish a committee to coordinate Fed-  
 14 eral, State, and local government wetlands policies (here-  
 15 inafter in this section referred to as the ‘Coordinating  
 16 Committee’).

17       “(b) FUNCTIONS.—The Coordinating Committee  
 18 shall—

19               “(1) assist in coordinating Federal, State, and  
 20       local wetlands policies;

21               “(2) make comments available to the Secretary  
 22 of the Army, acting through the Chief of Engineers,  
 23 or the Administrator regarding existing and pro-  
 24 posed regulatory, policy, program, or technical guid-  
 25 ance affecting wetlands systems;

1           “(3) in cooperation with the Secretary of the  
2       Army, acting through the Chief of Engineers, and  
3       the Administrator, assist in the review and field-test-  
4       ing of technical and scientific methods utilized in  
5       wetlands regulatory and non-regulatory program;

6           “(4) encourage the development and implemen-  
7       tation of State wetlands conservation plans pursuant  
8       to section 321;

9           “(5) encourage the development and implemen-  
10      tation of wetlands and watershed management plans  
11      pursuant to section 322; and

12          “(6) assist in the development of a national  
13      strategy for the restoration of wetlands ecosystems  
14      pursuant to section 324.

15          “(c) MEMBERSHIP.—The Committee shall be com-  
16      posed of eighteen members as follows:

17          “(1) The Administrator.

18          “(2) The Secretary of the Army, acting through  
19      the Chief of Engineers.

20          “(3) The Secretary of the Interior, acting  
21      through the Director of the United States Fish and  
22      Wildlife Service.

23          “(4) The Secretary of Agriculture, acting  
24      through the Chief of the Soil Conservation Service.

1           “(5) The Under Secretary of Commerce for  
2           Oceans and Atmosphere.

3           “(6) One individual appointed by the Adminis-  
4           trator who shall represent the National Governor’s  
5           Association.

6           “(7) One individual appointed by the Adminis-  
7           trator who shall represent the National Association  
8           of Counties.

9           “(8) One individual appointed by the Adminis-  
10          trator who shall represent the National League of  
11          Cities.

12          “(9) Ten State wetlands experts selected and  
13          appointed by the Administrator from among nomina-  
14          tions submitted by the Governors of each State.

15          “(d) TERMS.—Each member appointed pursuant to  
16          paragraph (6), (7), (8), or (9) of subsection (c) shall be  
17          appointed for a term of two years.

18          “(e) VACANCIES.—A vacancy in the Coordinating  
19          Committee shall be filled, on or before the thirtieth day  
20          after the vacancy occurs, in the manner in which the origi-  
21          nal appointment was made.

22          “(f) PAY.—Members shall serve without pay, but may  
23          receive travel expenses (including per diem in lieu of sub-  
24          sistence) in accordance with sections 5702 and 5703 of  
25          title 5, United States Code.

1       “(g) CO-CHAIRPERSONS.—The Administrator and  
2 one member appointed pursuant to paragraph (6), (7), or  
3 (8) of subsection (c) who shall be selected by such mem-  
4 bers shall serve as co-chairpersons of the Coordinating  
5 Committee.

6       **“SEC. 324. NATIONAL COOPERATIVE WETLANDS RESTORA-**  
7                               **TION STRATEGY.**

8       “(a) DEVELOPMENT.—Not later than one year after  
9 the date of the enactment of the Wetlands Conservation  
10 and Regulatory Improvements Act of 1993, the Adminis-  
11 trator and the Secretary of the Army, acting through the  
12 Chief of Engineers, in cooperation with the Coordinating  
13 Committee established under section 323, and with oppor-  
14 tunity for public comment and participation, shall develop  
15 a National Cooperative Wetlands Restoration Strategy  
16 (hereinafter referred to as the ‘Restoration Strategy’).

17       “(b) GOALS.—The goal of the Restoration Strategy  
18 shall be to restore damaged and degraded wetlands and  
19 riparian ecosystems consistent with the goals of this Act  
20 and with the recommendations of the National Academy  
21 of Sciences with regard to the restoration of aquatic  
22 ecosystems.

23       “(c) FUNCTIONS.—The Restoration Strategy shall—

1           “(1) be designed to help coordinate and pro-  
 2           mote restoration efforts by Federal, State, regional,  
 3           and local governments and the private sector;

4           “(2) inventory and evaluate existing restoration  
 5           efforts and make suggestions for the establishment  
 6           of additional efforts and funding mechanisms for  
 7           such efforts consistent with existing Federal, State  
 8           and local programs and plans;

9           “(3) evaluate the role played by, and success of,  
 10          wetlands restoration efforts in both regulatory and  
 11          nonregulatory contexts;

12          “(4) evaluate current efforts to monitor restora-  
 13          tion efforts;

14          “(5) periodically report on the status of wet-  
 15          lands restoration efforts; and

16          “(6) identify regulatory and nonregulatory ob-  
 17          stacles to wetlands ecosystem restoration and rec-  
 18          ommend methods to remove such obstacles.”.

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